

Maryland Insurance Co. v. Wood.

The vendee, by the terms of sale, had an option of taking the estate, after \*402] it was bid off to him, and in case of refusal, of having it sold again \*on his account. It might have produced more than on the first sale, in which case, the surplus would have belonged to him; or the same price might have been obtained, and then he would have lost nothing; or it might have sold for less, and then, by paying the difference which would have formed his whole loss, he would not have been exposed, as he must be, if this action proceeds, to have damages assessed against him, by some uncertain and arbitrary or unsatisfactory rule, which might be adopted by a jury. Of these advantages, which were reserved to him by the terms of the auction, the plaintiff had no right to deprive him. The court is further of opinion, that nothing which was done after the sale, at all varied the right of the parties. The judgment below is affirmed, with costs.

Judgment affirmed.

## MARYLAND INSURANCE COMPANY v. WOOD. (a)

*Blockade.*

The letter of Mr. Merry to the secretary of state, of the 12th of April 1804, extended to the island of Curaçoa, the order of the lords commissioners of the admiralty, of the 5th of January 1804, respecting the blockade of Martinique and Guadaloupe.

March 3d, 1813. ERROR to the Circuit Court for the district of Maryland, in an action of covenant on a policy upon the schooner William and Mary, "at and from Baltimore to Laguira, with liberty of one other neighboring port, and at and from them, or either of them, back to Baltimore:" "warranted by the assured to be an American bottom, proof of which to be required in the United States only."

The former judgment of the circuit court, in this case, having been reversed (6 Cr. 29), and the cause remanded for a new trial, the verdict and judgment were again in favor of the original plaintiff.

The defendants took only one bill of exceptions, which stated the execution of the policy, the sailing of the vessel, with proper documents as an American bottom, from Baltimore, on the 8th of March 1805, upon the voyage insured; her arrival off Laguayra on the 24th of the same month, where she remained three days, laying off and on, vainly endeavoring to \*403] obtain permission to enter the port, and on the 31st, sailed towards the port of \*Amsterdam, in the Island of Curaçoa, by the direct and accustomed route, with a view and intention of ascertaining, by inquiry of British ships of war, or other vessels, whether the port of Amsterdam was then in a state of blockade, and to enter it, if it should not be blockaded, but if it should be blockaded, not to attempt to enter it, but to proceed to St. Thomas or Porto Rico. That Amsterdam was a neighboring port to Laguayra, being distant about 147 miles. That when she approached Amsterdam, being distant about 30 miles, the master discovered a British vessel, at the distance of 21 miles, whereupon, he altered the course of the schooner, and stood directly towards the British vessel, for the purpose of inquiring whether Amsterdam was still in a state of blockade; that while so standing for the British vessel, which was a frigate then actually supporting the blockade of the port of Amsterdam, the schooner was captured by the

Maryland Insurance Co. v. Wood.

frigate, and sent into Jamaica, and there condemned for breach of the blockade of the port of Amsterdam, whereby she was wholly lost to the plaintiff. That on the 16th of May 1805, the plaintiff having received intelligence of the capture, abandoned the vessel, in due time, to the underwriters, who refused to accept the abandonment.

That on the 27th of October 1803, the government of the United States made to the British government, through its *chargé d'affaires* in the United States, a representation on the subject of a blockade, then recently notified, of the islands of Martinique and Guadaloupe; which representation is set forth at large in the bill of exceptions, being a letter from Mr. Madison, then secretary of state, to Mr. Thornton, the British *chargé d'affaires*, dated the 27th of October 1803.

That on the 5th of January 1804, the British government, in consequence of that representation, issued an order to its commanding naval officer in the West Indies, and to its courts of vice-admiralty there, relative to the blockade of Martinique and Guadaloupe; which order is as follows:

“Admiralty office, 5th January 1804.

“SIR:—Having communicated to the lords of the admiralty Lord Hawkesbury’s letter of the 23d ult., inclosing the \*copy of a dispatch, which his lordship had received from Mr. Thornton, his majesty’s *chargé* [\*404 *d'affaires* in America, on the subject of the blockade of the islands of Martinique and Guadaloupe, together with the report of the advocate-general thereupon, I have their lordships’ commands, to acquaint you, for his lordship’s information, that they have sent orders to Commodore Hood not to consider any blockade of those islands as existing, unless in respect of particular ports which may be actually invested, and then not to capture vessels bound to such ports, unless they shall have been previously warned not to enter them; and that they have also sent the necessary directions on the subject to the judges of the vice-admiralty courts in the West Indies and America. I am, &c.  
EVAN NEPEAN.”

“George Hammond, Esq.”

That on the 12th of April 1804, the British government, by its minister plenipotentiary in the United States, communicated the aforesaid order to the government of the United States, who caused it to be immediately published in the public newspapers.

That on the same 12th of April 1804, the said British minister plenipotentiary officially made known to the government of the United States, that the siege of the island of Curaçoa had been converted into a blockade, which communication was as follows:

Mr. Merry to Mr. Madison.

“Washington, April 12th, 1804.

“SIR:—I have the honor to acquaint you, that I have just received a letter from Rear Admiral Sir John Duckworth, commander-in-chief of his majesty’s squadron at Jamaica, dated the second of last month, in which he desires me to communicate to the government of the United States, that he has found it expedient for his majesty’s service, to convert the siege, which he lately attempted of Curaçoa, into a blockade of that island.

Maryland Insurance Co. v. Wood.

\*I cannot doubt, sir, that this blockade will be conducted conformably to the instructions which (as I have the honor to acquaint you in another letter of this date) have been recently sent on this subject, to the commander-in-chief of his majesty's forces, and to the judges of the vice-admiralty courts in the West Indies, should the smallness of the Island of Curagoa still render necessary any distinction of the investment being confined to particular ports. I have the honor to be, &c. ANT. MERRY."

That Travers, the master of the schooner William and Mary, heard a report at Baltimore, before he sailed, that Amsterdam was in a state of blockade; and that he was informed, before he sailed from Baltimore, by the master of an American vessel, that about four months before the time of giving that information, he arrived with his vessel, near the port of Amsterdam, and there met with a squadron of British ships of war, then blockading that port, and was warned off by the commander of the squadron, with his register indorsed in the usual manner. That Travers, in the course of his voyage fell in with a strong French squadron in lat. 15, long. 63, which was sailing westward. That the port of Amsterdam is in lat. 11 deg. 55 min., long. 68. That while laying off Laguayra, to endeavor to obtain permission to enter the port, or to anchor his vessel, he was informed by a merchant at Laguayra, to whom he had been introduced by a letter, and through whom he made application for permission as aforesaid, that the port of Amsterdam was then free from blockade; and was advised by the said merchant to proceed thither with his vessel—that the port of Laguayra and all the ports on the Spanish main were then shut against foreigners, whereby he was prevented from going on shore and from making inquiries, otherwise than by writing from his vessel to some person on shore.

That the island of Buenos Ayres was then a dependency of Curaçoa, distant from it about twenty miles east, and \*is a small island having  
\*406] no port, except a roadstead about the middle of its length, on the east side, where there was a small battery and military post. That the cruising ground of vessels blockading Curaçoa, was between that island and Buenos Ayres, which latter was included in the blockade, as were also all the other ports of the island of Curaçoa. That Travers did not attempt to enter the port of Amsterdam, nor sail towards it, with an intention of entering it, if blockaded, but merely for the purpose of ascertaining, by any lawful and proper means in his power, whether it was still in a state of blockade, of entering it, if it was not, and of proceeding elsewhere, if it was.

That when he sailed from Laguayra as aforesaid, he had, from the facts and circumstances above mentioned, reasonable ground of belief that the blockade had ceased, and had no means of obtaining any further information on the subject at any neighboring port or place.

Whereupon, the plaintiff prayed the court to instruct the jury, that if they believed the matters so given in evidence by him, then his right of recovery in this action is not affected by the conduct of Travers in proceeding as aforesaid from Laguayra towards Amsterdam, for the purposes aforesaid, which instruction the court gave, and also the further direction, that if they should believe that Travers intended, while at Laguayra, to violate the blockade of Amsterdam, and attempted it, by sailing towards that port, and within the limits of the cruising ground; in such case, his conduct was unlawful;

Maryland Insurance Co. v. Wood.

and the defendants were thereby discharged from any responsibility upon the policy. To this instruction, the defendants excepted, and brought their writ of error.

*Martin*, for plaintiffs in error.—When this case was here before, it was erroneously supposed, that the order of the 5th of January 1804, applied to the island of Curaçoa, as well as to those of Guadaloupe and Martinique. It was not until the 12th of April following, that the blockade of Curaçoa was notified to our government by Mr. Merry, who gives \*his opinion [407 that the former order would be extended to this blockade. But it is merely his opinion; he had no authority to bind his government upon that subject; and his opinion could not justify the master of this vessel in going to the blockading squadron for information. If he acted upon the information of the minister, he acted at his peril. 5 Rob. 74, 234; 1 Ibid. 144; *The Neptunus*, 2 Ibid. 92. He ought to have called at Buenos Ayres for information. Park 408-9; Marshall 321.

LIVINGSTON, J., thought this case could not be distinguished from the one which was here before. It appears to be only an application to this court to reverse its own decision.

STORY, J., thought the letter of Mr. Merry was conclusive upon the subject.

JOHNSON, J.—It does not appear to be so clear a case as the other.

MARSHALL, Ch. J., had formed no opinion upon this case. It seemed to him, to be different from the other.

*Harper*, for the defendant in error, requested that the opinion of the court might be given in writing.

MARSHALL, Ch. J.—I understand the opinion of the court to be, that the letter of Mr. Merry puts the case on the same ground as if the blockade had been of Martinique or Guadaloupe.

*Harper*.—That is, that it extended to this case the benefit of the order of the 5th of January 1804.

MARSHALL, Ch. J.—I so understand it.

LIVINGSTON, J., afterwards delivered the opinion of the court in writing, as follows:—It is the opinion of the court, that the communication of the British minister to the American government, on the 12th of April 1804, relative to the blockade of Curaçoa, furnished a sufficient excuse for the assured's proceeding \*toward that island, for the purpose of inquiring as to its continuance, and that his doing so, was no violation of his [408 neutrality. The court does not mean to be understood as giving any opinion on the effect of such conduct, if no such communication had been made. The judgment of the circuit court is affirmed, with costs.

Judgment affirmed.